

# FACT SHEET - SUBCONTRACTING OF TRAINING AND ASSESSMENT: 2019 REQUEST FOR APPROVAL

This Fact Sheet provides an overview of the application process, including the eligibility and evaluation criteria, for a request to subcontract training and/or assessment under 2018-19 Standard VET Funding Contracts, 2018-19 Standard VET Funding Contracts (Non-Victorian), 2018-19 TAFE VET Funding Contracts, and 2018-19 Dual Sector VET Funding Contracts. It should be read in conjunction with Contract Notification 2019-02.

## BACKGROUND

The Victorian Government's *Skills First* agenda includes a continuing commitment to high quality training and assessment. One of the ways in which this commitment is reflected in VET Funding Contracts is the requirement for any proposal for delivery of training and/or assessment involving a third party to be approved in advance by the Department of Education and Training (the Department).

While the Department recognises that subcontracting can be a valid and reasonable approach to business, any proposed subcontracting of training and/or assessment will need to demonstrate that each of the following criterion applies:

- **Genuine:** that the training addresses a critical labour market need and is not primarily supply driven
- **Specialised:** that the subcontractor has specific skills and experience, and the training could not be delivered by the contracted Training Provider
- **Limited:** that the scale, scope and time period of the arrangement is limited
- **Governance:** that the Training Provider has robust arrangements in place to ensure appropriate oversight of the arrangement, including the quality of the training and assessment delivered.

These four elements form the basis for the Department's assessment, and are reflected in the questions that Training Providers are required to address in their application. Further information is provided below under the 'Evaluation' section of this Fact Sheet.

The Department has observed that many arrangements described by Training Providers in previous years as "auspicing", "partnerships", or "collaborations" generally fall under the definition of subcontracting, and require Departmental approval. If a Training Provider is unsure whether an arrangement with another entity or individual falls under the contractual definition of subcontracting (Clause 6), the Department recommends submitting a SVTS enquiry to seek confirmation prior to entering into the arrangement. Further information is provided below under the 'Scope of Subcontracting' section of this Fact Sheet.

Notwithstanding the Department's approval of a particular subcontracting relationship, Training Providers remain responsible for the quality of the services, and compliance with all contractual requirements, of any third party they engage.

Training Providers are reminded that they may only subcontract training and assessment services in accordance with requirements set out under Clause 6 of the 2018–19 VET Funding Contracts.

## TIMING

Applications will be accepted via SVTS from January 2019 and thereafter on a rolling basis throughout the majority of 2019.

To note, only subcontracting applications for course commencements in the 2019 calendar year (1 January 2019 to 31 December 2019) will be accepted. Arrangements for the 2020 calendar year will be announced at a later date.

## LIMITS ON INDIVIDUAL TRAINING PROVIDERS

The following limits are applied to the number of commencements a Training Provider can seek Departmental approval to subcontract:

| Contract Type   | 2019 Maximum Number of Subcontracted Commencements  | Example   |
|---|---|---|
| 2018-19 Standard VET Funding Contract<br>and<br>2018-19 Standard VET Funding Contract (Non-Victorian) | 40% of the Commencement Allocation for the 2019 calendar year, <u>up to a maximum</u> of 1,000 subcontracted commencements. | Training Provider X's Schedule 2 had a Commencement Allocation of 1,000 commencements for 2019. Its subcontracting limit for the year would be 400.<br><br>Training Provider Y's Schedule 2 had a Commencement Allocation of 500 commencements for 2019. Its subcontracting limit for the year would be 200.<br><br>Training Provider Z's Schedule 2 had a Commencement Allocation of 3000 commencements for 2019. Its subcontracting limit for the year would be 1000. |
| 2018-19 TAFE VET Funding Contract<br>and<br>2018-19 Dual Sector VET Funding Contract                  | 40% of commencements for the 2019 calendar year, <u>up to a maximum</u> of 1,000 subcontracted commencements.               | TAFE X expects to have 5000 commencements for 2019. Its subcontracting limit for the year would be 1000.  |
| 2018-19 Restricted VET Funding Contract   | No subcontracting allowed.  | N/A   |

Where the Department approves a subcontracting arrangement, this does not increase the Training Provider's Commencement Allocation. This also applies to any relevant limits to commencements at TAFE and Dual Sector Training Providers.

## LIMITS ON INDIVIDUAL SUBCONTRACTORS

The commencement limit on individual subcontractors will be set at 200 commencements in total per year per subcontractor (i.e. 200 in total across all Training Providers with whom the subcontractor has a

relationship). This limit reflects the Department's view that an organisation acting as a subcontractor should not operate at a greater scale than a Training Provider holding a Restricted VET Funding Contract.

This commencement limit on individual subcontractors extends to all Related Entities of a subcontractor. For example, if two subcontractors are Related Entities as per the definition provided in the 'Subcontractor's Declaration – 2019' form, they will have a combined limit of 200 commencements (not 200 commencements for each organisation).

If the Department receives multiple proposals which would take a Training Provider or a subcontractor over their commencement limit, the Department will determine, at its sole discretion, how many commencements (if any) are approved at a particular Training Provider and/or subcontractor.

## DUE DILIGENCE

Training Providers are expected to conduct their own due diligence when entering into contractual relationships with other organisations to ensure they are meeting their obligations under the 2018-19 VET Funding Contract. In particular, Training Providers are reminded of the requirement to not engage, employ, contract or otherwise deal with any **Disallowed Person** (as defined in the 2018-19 VET Funding Contracts). A Disallowed Person is a person that since 1 January 2011:

- a. *was a registered training organisation that was party to a contract with the Department regarding government subsidised training which the Department terminated for any reason other than on a ground equivalent to one of the grounds specified in Clauses 18.3(f), 18.3(g) and 18.3(h) (of the 2018-19 Standard VET Funding Contract), or a Relevant Person at such a registered training organisation;*
  - b. *was a registered training organisation that:*
    - i. *had its registration under the Act, National Act or relevant equivalent legislation revoked, suspended, or cancelled for a reason / or reasons that the Department considers would have affected its ability to provide services equivalent to the Training Services; or*
    - ii. *had restrictions imposed on its registered training organisation operations that the Department considers would have affected its ability to provide services equivalent to the Training Services,*
- or was a Relevant Person at such a registered training organisation;*
- c. *was a registered training organisation that was subject to an Other VET Funding Arrangement Termination Event, or a Relevant Person at such a registered training organisation; or*
  - d. *was responsible, via their acts or omissions, for any of the matters raised in paragraph (a), (b) or (c) occurring to another person or entity*

Training Providers should be aware that the Department will also conduct due diligence in relation to any request lodged.

## SCOPE OF SUBCONTRACTING

To note, the Department will consider subcontracting to have taken place in circumstances where any individual who carries out any part of a Training Provider's Training Services is not:

- a) an employee or officer of the Training Provider; acting in the their capacity as such an employee or officer; or
- b) a Sole Trader engaged directly by the Training Provider.

### Points of clarification

For the avoidance of doubt, where an 'auspicing arrangement', 'partnership' or 'collaboration' between a Training Provider and a third party fulfils the characteristics of a subcontracting arrangement, the arrangement will be treated as such and will require the approval of the Department.

Similarly, anecdotal evidence indicates it may be common for training providers to think of a person as a 'sole trader' on the basis that they own and operate their business as an individual, rather than whether they own and operate their business with a company structure. For example, the engagement of a professional plumber to provide training and assessment (and no other Training Services) in the Certificate III in Plumbing, and making payment to the plumber's proprietary limited company which exists primarily as a plumbing business.

As the arrangement described above is with a company rather than with a Sole Trader, it is considered to be a subcontracting arrangement for the purposes of the VET Funding Contract.

However, noting:

- the Department's interest in a vocational education and training system with high quality trainers and assessors who hold current industry experience, and
- the fact that the individual is engaged for the sole purpose of providing training and assessment,

the Department will expedite subcontracting applications in these instances. Training Providers should make clear the nature of the arrangement when lodging such an application.

Other similar arrangements (for example labour hire or engaging an individual who does not own or control the relevant company) would not be similarly expedited.

## EVALUATION CRITERIA

As outlined in the application documentation, the proposed subcontracting arrangement must fully address the evaluation criteria: genuine, specialised, limited, and appropriate governance.

The application documentation contains seven questions which must be answered in detail.

### Genuine

*Question 1: How does the proposed subcontracting arrangement address a critical need and/or existing labour market demand?*

Your organisation must provide verifiable evidence to demonstrate a critical need or labour market demand. For example, a good response should include evidence from an employer supporting the need for the training and assessment of employees, or evidence of a major infrastructure project that would require an increase in skilled employees (where relevant).

Particular attention should also be given to how this arrangement is in the interest of students. For example, what career pathways or job opportunities would result from the student completing the course under the proposed subcontracting arrangement?

*Question 2: Why can't the proposed training and assessment for subcontracting be delivered directly by the Training Provider?*

A good response to this question will address the following:

- What might be preventing your organisation from increasing its capacity to deliver the training and assessment?
- What infrastructure does your organisation lack that prevents it from delivering the training and assessment?
- What specific skills or expertise does your organisation lack that prevents it from delivering the training and assessment?

### Specialised

*Question 3: What specific skills, experience and infrastructure does the subcontractor have?*

Include information about relevant qualifications, and proven industry experience of each of the trainers to be used, including currency of industry connections, experience and knowledge.

The Department expects that responses to this question will include detailed information about the relevant trainer/assessor skills and qualifications. A good response to this question should include the following:

- What infrastructure (if relevant) the proposed subcontractor holds to deliver the course that is not available to your Training Provider;
- What specific skills or expertise the proposed subcontractor holds to deliver the course; and
- A list of the qualifications, skills and experience of the trainers/assessors at the proposed subcontractor.

*Question 4: Is the proposed subcontracting arrangement for either:*

- a) shared delivery of the training program between the Training Provider and the subcontractor? or*
- b) delivery of the whole training program by the subcontractor?*

The Training Provider should clearly detail the extent and nature of the subcontracted delivery.

Responses should detail which units/modules will be delivered by the subcontractor and which will be delivered by the Training Provider.

Training Providers that submit applications for full delivery by the proposed subcontractor are unlikely to be approved. Where the proposed subcontracting arrangement does not involve the delivery of at least one entire unit/module, such as in the case of individual trainer and assessors covering limited classes, this should be clearly detailed.

### Limited

*Question 5: What is the scale and scope of the likely student cohort?*

The Training Provider should provide verifiable evidence of the number and attributes of the intended student cohort as any approval will detail a specific number of student commencements in 2019.

*Question 6: Is the proposed subcontracting arrangement limited to a defined period?*

The Training Provider should provide information about the timeframe within which the commencements under the proposed subcontracting arrangement are anticipated to occur. Circumstances where the period for commencements is clear, and where the proposal addresses an immediate need will be considered favourably against the criteria.

### Governance

*Question 7: What are the proposed arrangements for ensuring appropriate oversight and control of the subcontracting relationship?*

Responses should include details proposed for ensuring regular and adequate monitoring of the subcontracting arrangement to maintain quality standards for training and assessment. Responses should address proposed monitoring processes both with the subcontracted entity and internal to the Training Provider's own operations.

A good response will address the following:

- Frequency and mode(s) of contact with subcontracted entity;
- Process(es) for collecting and checking data regarding the subcontracted entity's delivery of training and assessment, and reporting of student records;
- Process(es) for ensuring the quality of the training and/or assessment delivered by the subcontracted entity; and

- Structures/systems within the Training Provider to ensure consistent recording, and internal communication, of subcontracting arrangements.

## OTHER INFORMATION

The Department will consider applications where the subcontractor has specialised expertise to be more 'Genuine'. Subcontractors that are generalists or that deliver across multiple unrelated training packages (e.g. construction and hospitality) will be considered less favourably except where they are delivering in regional areas or where there are no alternative suppliers.

## APPROVAL OF SUBCONTRACTING ARRANGEMENTS

The Department will evaluate all applications and then provide formal advice to the Training Provider that indicates the approved subcontractor, courses and student commencements for 2019.

Should the subcontracting arrangement vary during the year, such as changes to approved course/s or student commencement numbers, the Training Provider should contact the Department in order to seek a variation to the arrangement, via SVTS under the 'Skills First VET Funding Contract – Subcontracting of Training Services' category.

## REPORTING OF SUBCONTRACTED COMMENCEMENTS

As per the *Victorian VET Student Statistical Collection Guidelines 2019 v.1* the Training Provider is required to report the *Deliver Provider ABN* of the subcontractor against each Subject Enrolment on the Training Activity (NAT00120) file. This is to distinguish between training delivered by the Training Provider and that by a subcontracted entity.

## APPLICATION PROCESS

Training Providers will be required to submit the following completed forms, via SVTS under the 'Skills First VET Funding Contract – Subcontracting of Training Services' category:

- the 'Request for Approval of Subcontracting – 2019' form; and
- the 'Subcontractor's Declaration – 2019' form.

Failure to submit both forms as indicated will be deemed by the Department as an incomplete application and will not be considered as having met the eligibility criteria.

The process for seeking approval of subcontracting, including the supporting information required by the Department, is subject to change.

## WHO CAN I CONTACT IF I REQUIRE FURTHER INFORMATION?

If you have a question regarding subcontracting, please contact the Department using the Enquiry function of SVTS under the 'Skills First VET Funding Contract – Subcontracting of Training Services' category. If you have difficulty in completing the 'Request for Approval of Subcontracting -2019' form or you wish to discuss your application, please include a phone number in your Enquiry so that a Departmental representative can contact you to provide advice.